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PERTH CASINO ROYAL COMMISSION

PUBLIC HEARING - DAY 59

10.00AM WEDNESDAY 02 FEBRUARY 2022

COMMISSIONER NJ OWEN

COMMISSIONER CF JENKINS

COMMISSIONER C MURPHY

HEARING ROOM 3

MS PATRICIA CAHILL SC and MR JOSEPH WOODS as Counsel Assisting the Perth Casino Royal Commission

MR KEAHN SARDINHA as Counsel for the Department of Local Government, Sport and Cultural Industries

MR NOEL HUTLEY SC and MS RACHAEL YOUNG as Counsel for Mr James Packer and Consolidated Press Holdings Pty Ltd and CPH Crown Holdings Pty Ltd

MR JOSEPH GARAS SC and MR TIM RUSSELL and MR RICHARD LILLY as Counsel for Crown Resorts Ltd; Burswood Limited; Burswood Nominees Limited; Burswood Resort (Management) Limited; Crown Sydney Gaming Pty Ltd; Southbank Investments Pty Ltd; Riverbank Investments Pty Ltd and Crown Melbourne Limited

MR PETER SADLER as Counsel for the Gaming and Wagering Commission of Western Australia

MS JOANNE SHEPARD as Counsel for Mr Barry Felstead

DR ELIZABETH BOROS as Counsel for Mr Ken Barton

MR DAVID SHAW as Counsel for Mr Lonnie Bossi

COMMISSIONER OWEN: Please be seated.

Just before I call on Mr Hutley, Mr Garas, there are some further matters following on from our dialogue with Mr Dharmananda yesterday that we would be assisted with by some further submissions from Crown. We are happy for these to be taken on notice and for a written response to be provided.

There are five questions. The first is the issue was raised concerning perceived departures from the trust deed and Crown's submission was to the effect that the departures, if there are any, are cured by consent because all three entities, that is BNL, BRML and BL are parties to the arrangement that is, in fact, in operation. The question that arises from that is this: is it more accurate to characterise it in terms of waiver rather than consent?

The second question is that Crown says, for all practical purposes, the three entities work collectively, and that is the phraseology used in BL's board charter, and that that's of general, across-the-board applications.

Two questions arise from that. Could that be characterised as a de facto amendment to the trust deed because of its ongoing and across-the-board operation? And if that is so, what is the impact of clauses 17(1)(c) and (d) of the State Agreement.

The third question is related to that. If that is the proper characterisation, what impact, if any, is there of the parliamentary ratification of the 1997 and the 2003 changes to the State Agreement?

The fourth question is in that working collectively scenario, could issues --- and I stress the word "could" --- arise about merger of interest in trust?

The final question concerns the term "the business" of Burswood Limited. The third paragraph, clause 3 of the board charter relates the business of Burswood Limited to the casino licence. In the fourth paragraph it says that references to the business of Burswood Limited are references to the businesses conducted by the Burswood entities collectively.

That leads to two specific questions: is this a working description, albeit in brief summary, of "the business", and it is this: the conduct of casino operations and the resort facilities, including food, beverage, entertainment and related facilities. The second question is: is this the business of Burswood Limited for the purposes of article 3.12?

As I said, we are quite happy for you to take those questions on notice and if a written response could be provided by the close of business tomorrow, that would be greatly appreciated. Thank you.

Thank you, Mr Hutley. You wish to make some submissions on behalf of the CPH parties?

MR HUTLEY: Thank you very much.

5 **SUBMISSIONS BY MR HUTLEY**

MR HUTLEY: As you will have seen from our summary document supplied, there are four topics we propose to address and I won't repeat what those topics are.

10

Could I turn to the first, which deals with our submissions as to the limits of the suitability inquiry. We have outlined in our primary written submissions in paragraphs 9 to 21 our central point; namely, that the CPH parties and CPH's shareholding are not relevant to the current suitability of the relevant Crown entities.

15

We embrace the observation made by the Commission in its closing observations. Commissioners, you will find that at Part A, section 3, page 239, paragraph 336. There seems to have been an original version and if you are using that, the relevant page is 233.

20

That observation was that by reason of the resignation of directors and senior management, and undertakings and arrangements that are now in place, any influence that Mr Packer or, for that matter, CPH had or may have had in the past is no longer extant.

25

We may say the matter can, in fact, be taken a little bit further, should that be necessary. Not only is whatever influence those parties had no longer extant, so long as the undertakings, properly understood, are in place and complied with --- and there is no suggestion made they wouldn't be complied with --- that influence has
30 ceased permanently. It is extinct, not merely dormant.

There is no suggestion that the undertakings as I have submitted will not be complied with. Thus, not only are we irrelevant to the current suitability inquiry, there is no reasonable prospect we could ever again become relevant to a suitability.

35

Thus, the kind of factors which the GWC refers to in paragraph 56 of its reply submissions that may be relevant to the question of suitability --- for example, the role of individuals in engaging in conduct --- were not examined by the Commission in respect of the CPH parties in a relevantly current way. That approach was, with
40 respect, appropriate, given that that organisation, that is CPH, no longer plays any role other than that of a shareholder in Crown. That is all we wish to say on the first point.

We wish to make some observations on our second point, namely the limits of the
45 use of prior inquiries' findings. We acknowledge, of course, that the Terms of Reference require this Commission to have regard to the Bergin Report. Significantly, the Terms of Reference also require the Commission to have regard to

public transcripts and other materials considered by the Bergin Inquiry in respect of which this Commission has been able to access and considers it appropriate to have regard to. That is Terms of Reference paragraphs (b)(i) and (b)(ii).

5

Last, in respect of the findings in the Bergin Report, in accordance with the Terms of Reference, this Commission needs to (a) firstly, obviously, understand the findings that were made in their context. Your Honour, you will see we have made submissions, and I won't go over them, in respect of some references to the findings
10 in the Bergin Report which we, with respect, submit have been, by those relying upon them to a degree, taken out of context.

That is the first thing; namely, understand the findings that were made in their context.

15

Secondly, at least where that finding is relevant but disputed, avail itself of access to all materials to determine for itself the correct position. Indeed, the Terms of Reference direct this Commission to consider the materials sitting behind the Bergin Report if this Commission considers it appropriate. That is an acknowledgement that
20 the Commission may consider whether some or any finding made in that report is sound or unsound.

Where a finding is challenged, and we have challenged a limited number of them, and that challenge is supported by reference to materials which were before the
25 Bergin Inquiry, we submit it would be appropriate, in the sense used in the Terms of Reference, for the Commission to have regard to the underlying material as a matter of procedural fairness. And then address its consideration of those findings in the context of the contest raised by the submissions and materials adverted to it in those submissions.

30

Further, whilst the Terms of Reference permit regard to be had to the Bergin findings, they suggest no canonical preference for findings over other materials. No greater weight should be given to the findings. If the finding was made and the Commission is satisfied it was made either contrary to the material or it cannot be
35 satisfied one way or the other, no weight should be given to the finding.

Although not explicitly mentioned in the Terms of Reference, a similar approach, we submit, would apply to any findings of other bodies, such as the Victorian Royal Commission.

40

Turning to a few specific concerns with which the CPH parties have with the findings of other bodies, those are dealt with in part 3 of our primary submissions. We do not propose to say anything further about those matters, other than respond briefly to some matters raised on behalf of Mr Craigie in his reply submissions of 27
45 January 2022.

If you have those before you, I will be referring to a number of paragraphs and it might be convenient for you to have those paragraphs. I first go to paragraph 5(a) in

those submissions, which I think you will find on the first page of those submissions.

Mr Craigie's submissions deny his involvement in the establishment of the VIP
5 working group. We submit he overlooks that Mr Johnston gave evidence in the
NSW Inquiry that Mr Craigie suggested the initiation of that very group together
with Mr Packer. Mr Neilson also gave evidence to that effect in this Commission.

We give the evidentiary references at footnote 50 in our primary submissions. Can I,
10 if you just take those up and make a note, if you can make a note over them that is
electronic or in handwritten writing, that there is a typographical error. The
relevant paragraphs of Mr Johnston's third statement are paragraphs 14 and 15, not
paragraph 13.

15 Mr Craigie made no challenge to that evidence in the NSW Inquiry or in this
Commission, nor is there any inconsistency with Mr Craigie's evidence in that
inquiry, as he suggests. In fact, that evidence acknowledged that he went to the first
two meetings of the VIP working group. Commissioners, you will find that in the
NSW Inquiry transcript at page 1,460, lines 27 to lines 30.
20
Returning to Mr Craigie's submissions here, in paragraph 5(b), Mr Craigie appears to
contest in an unspecified way Mr Packer's evidence in the NSW Inquiry regarding
oversight of Crown's operations in China and that when Mr Packer became aware of
the Korean arrests, he tasked Mr Craigie and Mr Rankin to look into the matter to
25 ensure Crown was not at any similar risks.

You will find the references to that evidence at footnotes 161 to 164 of our primary
submissions. Again, if you take those up and look at footnote 2, 164, there is a
reference to transcript 3608 of the evidence of Mr Packer in the NSW Inquiry. There
30 is a reference there to lines 37 to 39. It should be 27 to 28. I apologise for this.
Enormous work was done, so it is understandable there is the odd proofreading error.

No contest of the variety now made was made in the NSW Inquiry by Mr Craigie,
nor did anyone else contest the evidence to which we have made reference. In fact, it
35 seems to have been accepted in the inquiry report and you will see that at chapter 3.3,
paragraph 221. We won't go to it.

I now turn to paragraph 5(c) of Mr Craigie's submissions. That relates to Mr Packer's
evidence regarding Mr Craigie's oversight and responsibility for risk management of
40 the Perth Casino and Mr Packer's evidence that he looked to Mr Craigie for guidance
on compliance and corporate governance matters.

There is, contrary to submissions from Mr Craigie, no inconsistency between Mr
Packer's oral evidence and his witness statements. That evidence you will see at
45 footnote 165 of our primary submissions and you can compare that evidence to
paragraph 47 of Mr Packer's witness statement to this Commission.

Mr Packer's evidence as regards Mr Craigie was, in substance, no different to the

evidence Mr Packer gave to the NSW Inquiry. Could I give here a list of transcript references. These things tend to sound a bit like one is at some form of housie evening. Or would it better for us to send the Commissioners a short list of them,
5 because there are six or seven references. It might be better if we send you a list.

COMMISSIONER OWEN: If there are only six or seven, just give them to us I think, Mr Hutley, thank you.

10 MR HUTLEY: Yes. In the NSW Inquiry transcript, page 3,600, line 30; 3,602, line 43; 3,604, lines 19 to 27; 3,608, lines 26 to 34; 3,612, lines 4 to 10, and 3,612, lines 32 to 39. No issue was raised by Mr Craigie in the inquiry before Ms Bergin on that issue.

15 I now turn to paragraph 5(d) of Mr Craigie's submissions. He there suggests that there is no corroborating evidence of Mr Packer's evidence of almost daily conversations between them. Whilst one wouldn't expect corroboration, it is unclear whether it is seriously disputed that he would have been in regular communication with Mr Packer when Mr Packer was the Executive Chair of Crown Resorts and Mr
20 Craigie was its CEO.

Finally, as to paragraph 5(e), Mr Craigie raises what we submit is a quibble as to the characterisation of Ms Coonan's evidence that Mr Felstead reported to Mr Craigie in relation to board meetings and nobody else, in that she did not explicitly say Mr
25 Felstead reported to nobody else.

Now, if in answer to a question a person says, "To whom did you report in relation to X?", they say, "I reported to Y", and refers to no one else, I wouldn't infer that an answer by such a person indicated that she was saying she reported to Y and possibly
30 many others. We say the point is of no significance. You will see a reference to Ms Coonan's evidence at footnote 221 of our primary submissions. I won't go through it.

I now turn to our third topic, shareholder caps. This is dealt with in part 2 of the CPH parties' primary submissions. We would like to emphasise parts of them now.
35
By "shareholding caps" we mean either a hard cap on permissible shareholding in a casino licensee or a holding company or an amount which shareholding in the casino can only be obtained with approval of a regulator, which is less than what the Casino *Burswood Island Agreement Act of 1985* presently requires. We submit that no such
40 recommendation should be made.

First, the Commission did not inquire into any parties' ability to influence the management and operation of the casino by reason of its shareholding. In our submission, recommendations about shareholding caps can only be properly made if
45 it is first established there is, or is likely to be, a deleterious effect of a party's influence arising from its shareholding.

Absent any found detriment or likelihood thereof, from the mere existence or exercise of that voting power, it would be a significant step for the Commission to recommend limits on a company's ability to raise capital and a person's shareholding because, for example, the mere theoretical possibility of adverse influence a fortiori if there is no theoretical possibility of adverse influence.

The point was made by GWC at paragraph 62 of its reply submissions. And if you go shortly to it, if that is conveniently available, where it says:

> *Simple limits on equity ownership may not reflect the realities of control and influence that may be exercised through relationship or economic interests.*

Where there are, for example, constraints which neutralise even theoretical possibilities, it is even greater reason not to submit controls. We say there is no evidence that equity ownership levels created any of Crown's issues. Nor should it be thought that capping equity levels provides solution to such issues.

Secondly, there is no evidence before this Commission and there was no evidence before the Victorian Royal Commission or before the NSW Inquiry that CPH's mere shareholding had influenced Crown's culture or that it prevents Crown from embedding cultural change. There was no finding in either the Victorian Royal Commission or the NSW Inquiry to the effect that CPH's mere shareholding influenced Crown's culture.

Indeed, the NSW Inquiry did not even recommend a cessation of CPH nominees on the Crown Resorts Board and proceeded on the basis that two such nominees would remain. You will see that at chapters 4.3.5, pages 467 to 468 in paragraph 11 of that report.

Thirdly, in our respectful submission, Recommendation 28 of the Victorian Royal Commission, which has some significance in the submissions on this topic, relied on a critical matter which was wrong. I don't know if you have that available to you, the relevant part of volume 1 of the Victorian Royal Commission report. But if you do have access to chapter 17, particularly internal pages 33 to 34, that deals with Recommendation 28.

At paragraphs 84 to 85, the position of CPH is addressed. There are two grounds placed as justifying the position with respect to Crown CPH's interest. The first is the first sentence of paragraph 84. I won't stay to debate that, which is a factual matter which, whilst we may contest it, is not to the point here. But on the second point, it says:

> *On the other hand, once its undertakings to ILGA lapse, the position of control would be restored. That could be detrimental to Crown Melbourne.*

. So, fundamental to the

recommendation of the Victorian Royal Commission was an assumption that the undertakings to ILGA, that is to the NSW Commission, would lapse.

5 It seems to have proceeded from the assumption that those undertakings had a temporal aspect. Other than the undertakings concerning voting with respect to directors and nominees, there was no temporal limit to the undertakings. And with respect to the directors aspect, the temporal limit was 2026 and then only with the approval, in that case of ILGA, and in respect of all other proffered undertakings,
10 each regulatory body of concern, namely the Victorian, Western Australian and NSW bodies.

So with all due respect to the Victorian Royal Commission, that recommendation proceeded on a fundamental, with respect, misunderstanding of the ILGA
15 undertakings.

Fourthly, to impose a shareholding cap is to restrict a prospective shareholder's ability to buy shares and to restrict the company in who to which the cap applies to raise capital freely. No evidence has been provided, so there has been no
20 consideration of the economic effect that might have, let alone how a sell-down might work and the adverse effect any sell-down may have on price.

Fifthly, were any such shareholder cap recommendations to be countenanced, there are good reasons why it would not operate with respect to existing shareholders. I
25 won't repeat here, but CPH's theoretical adverse influence that could arise from it has been removed for the reasons we have adverted to; namely, they are ceasing to participate in the organisation through nominees or the like, and the undertakings which we have referred to, which has resulted in the fact that they, relevantly, have ceased to be a person or persons of relevance to the consideration of whether the
30 entities the subject of this inquiry are suitable persons.

Sixthly, we submit the Commission has not itself undertaken any inquiry into any historic influence of the CPH parties in the affairs of Crown and no CPH person has been called to give evidence in relation to it, and that we submit.

35

Finally, there is significant complexity to be considered in recommending any shareholder caps under the *Casino Control Act*, given they should be harmonious with threshold caps for takeovers and acquisitions of relevant interests under the Corporations Act, Foreign Acquisitions and Takeovers Act and capped shareholdings
40 in the Casino *Burswood Island Agreement Act.*

The absence of any analysis in the closing observations as to the current legislative regime under section 17 of the Casino Burswood Island Agreement Act --- and it hasn't been referred to. If you take a moment to look at them, and I won't purport to
45 analyse them but if the Act is conveniently available to you, section 17(1) deals with questions of disclosure.

The fact that that has not been the subject of analysis or inquiry is an indication that

this issue of caps and the appropriateness of caps and should different arrangements be put in place is indicative that this is not an issue ripe for consideration by the Commission. That is all I wish to say.

5

Can I turn now to our final point. That concerns the GWC's submission as to the recommended legislative amendment. Our first position submission is that this question does not fall within the Terms of Reference of the Commission and should not be the subject of a recommendation of a legislative amendment, so the
10 Commission is treated as if it were a section 21A(5) inquiry under the Casino Control Act.

We have dealt with this in writing in part 1 of the CPH parties' reply submissions. We also adopt Crown's reply submissions dated 27 January 2022 at paragraphs 8 to
15 13.

Can I say something about the submissions on behalf of the GWC yesterday, where they stated that the amendment they seek is similar to the amendments made to the Casino Control Act 1991 Victoria. There are a number problems with that
20 submission.

Firstly, just because amendments were made in Victoria does not overcome the problem that it is not within the Terms of Reference for this Commission to make recommendations about how its report be treated at the time of any potential future
25 consideration by the minister of the exercise of his or hers, or whoever be the minister, powers under section 21(b) of the Casino Control Act.

GWC relies on Terms of Reference 7, which enables this Commission to examine "matters reasonably incidental to" the suitability matters. This suggested
30 recommendation would not be reasonably incidental to the suitability inquiry because it is about consequences after any such decision is made as to suitability by another decision-maker at a different point of time.

GWC also relies on Terms of Reference 11, which relates to matters which might
35 enhance the regulatory framework and GWC's future capability and effectiveness in addressing any of the regulatory matters. The recommendation goes beyond the regulatory framework or GWC's future capability and effectiveness in addressing regulatory matters. It goes to the minister's power to, in effect, impose penalties and consequences arising from this report.
40

Next, in Victoria, amendments were made to make findings and recommendations of the Victorian Royal Commission grounds upon which VCGLR could take disciplinary action, as there defined, which includes the power to impose penalties and the powers for suspension and cancellation of casino licenses.
45

If the Commission has the *Casino Control Act 1991*, the relevant section is section 20 as in its current amended form, and the relevant subsections are 11 and 14. To understand them, one has to deal with the definitional clauses in subsection 1 and one

will see there the definition of "disciplinary action", if the Commission has access to
50 the

section, and grounds for disciplinary action.

However, when one looks at those sections, they are in contrast to what the GWC
5 seeks here, which is to have this Royal Commission deemed to be the inquiry under section 21A(5) of the Western Australian Act. The GWC seeks more than the mere addition of a ground of the minister's action, but that a statutory precondition to the minister's exercise of powers be changed.

10 Thirdly and notably, under the new section 20, subsections 11 and 12 of the Victorian Act, the VCGLR cannot cancel or suspend the Melbourne Casino licence using the findings or recommendations of the Victorian Royal Commission report as a ground, unless a recommendation has been made of the special manager to do that, or if the disciplinary action arises from a request from the minister, following an
15 investigation under section 24 of the Victorian Act.

In contrast here, the GWC does not appear to suggest any limits on the use of the Royal Commission's report. It seeks the Royal Commission be deemed as the section 21A(5) inquiry, apparently to minimise legal challenge to a potential decision
20 of the minister. That, of course, deprives one of important procedural rights.

It is not, and has not been, the function of this Commission to consider the Victorian Act and whether it considers that Act is a wise or appropriate response to the issues raised before this Commission. Were it part of the Commission's function, one
25 would firstly have to, as it were, understand and analyse how the Victorian Act operates and, secondly, whether it was, in the view of the Commission, an appropriate response to the issues which have come before this Commission.

Because this question has not been, until effectively final submissions, conceived of
30 as being part of this inquiry, none of that has occurred. And so, That again points to the inappropriateness of issues of this importance being taken up, as it were, at the very heel of the hunt in final submissions. We have not, because of that, subjected to critical analysis the legislative response in Victoria, nor has anyone else. So I don't comment upon it, but merely to observe that that which the GWC here promotes is
35 quite different to the response in Victoria. Those, if it pleases the Commission, are our submissions.

COMMISSIONER OWEN: Thank you, Mr Hutley. Commissioner Jenkins?

40 COMMISSIONER JENKINS: Yes, thank you.

QUESTIONS BY THE COMMISSION

45

COMMISSIONER JENKINS: Mr Hutley, just one issue that I want to explore with you in respect to your submissions about the shareholding. Whether it would enhance the regulatory framework to have different shareholder caps is one matter; the other issue

is whether it is necessary for the PCRC to consider a recommendation such as was made by Commissioner Finkelstein in respect to CPH's shareholding in CRL.

5 One way that the PCRC might look at that issue, is that in the light of Commissioner Finkelstein's recommendation that CPH be required to sell down its shareholding in CRL and in light of the Victorian government's comments that it will implement the recommendations of Commissioner Finkelstein, is that issue is done and dusted, so to speak, for the PCRC because if that recommendation is implemented, CPH will have 10 to sell down its shareholding in CRL.

Why shouldn't the PCRC simply take that approach? Is there an implication in what you are saying that that recommendation will not be implemented by the Victorian Government?

15

MR HUTLEY: Commissioner Jenkins, I would not --- I don't know whether it will be implemented or not. I certainly can't suggest it won't be, but that is a matter of politics. If it is implemented, then it will be a law of the State and it will have whatever compulsive force it is, in whatever form it is taken up.

20

But the question here, in our respectful submission, is whether this Commission should recommend such a law. If this Commission sees, for example, that recommendation, as we submit is clear, seems to have proceeded on an erroneous assumption, namely that there was a future risk of restoration of the predicate 25 assumption of improper exercise of power, and that was the predicate --- there were two reasons, then if one was wrong and the only fact was that there had been past matters of concern, then this legislation to compel sale of shares is nothing more than punishment. Whereas if it is based upon a threat, it may be something different.

30 There is no reason for this Commission --- this Commission is not concerned with what the legislature of Victoria might or might not do. That will be a matter for the legislature of Victoria, and if the legislature of Victoria undertakes that, it will have a consequence. This Commission is concerned as to what is appropriate legislation.

35 On one view, if the Victorians go forward with their requirement, this legislature can say, "Well, we don't need to concern ourselves with this at all, either to agree or disagree with it, and we won't make any recommendation because whatever will occur will occur in Victoria." But there is no reason, in our respectful submission, for this Commission to, as it were, say that because Victoria says it will do 40 something, we will fall in with it. We say that would be a wrong approach to take that.

Can I say, we submit that if this Commission forms the view that the Victorian recommendation was based on a predicate error and observed upon that and didn't 45 adopt that case because of that, that might have political implications, I can't speak to them across this country. In other words, that's why we say --- that's exactly the point.

We submit, with respect, that this Commission should not, as it were, in any

circumstance where there is active dispute, consider itself appropriate to, as it were, fall in with the approach taken elsewhere. It should just set out its views.

5 COMMISSIONER JENKINS: I appreciate that and I am not suggesting that the PCRC might fall in with what Commissioner Finkelstein recommended. What I am saying is that the PCRC should take into account what is happening or is likely to happen elsewhere in relation to the utility of it enquiring into issues where our Terms of Reference, in effect, require us to do that.

10

So I am saying that currently that recommendation has been made, the Victorian Government has said it agrees in principle with implementing those recommendations, and I am asking you is there any reason why we should query that and

15

I will now be more specific. Clearly, your position seems to be that that recommendation is not agreed with. Are the CPH parties challenging it? Are they making representations to the Victorian Government to the effect it should not be implemented?

20

MR HUTLEY: As to the former, legal challenge obviously to a recommendation of a Royal Commission, short of it being beyond the Terms of Reference or involving there being an Ainsworth-like challenge, is practically impossible. As to, in effect, what is being done politically, it is really not appropriate, in my respectful

25 submission, that I give such sort of materials, as it were, from what used to be called the Bar table.

In our respectful submission, this Commission's views on these topics will be important, not will be important for themselves. And For example, if this

30 Commission were to express --- and the issue is raised, as it quite appropriately is, what is likely to occur --- excuse me, could I just take a note. I'm being informed of something. I will come back to this. But It is directly responsive to the issue you raise, Commissioner Jenkins.

35 If you go to the Terms of Reference and you go to the Terms of Reference at (d), it says declare that to facilitate a proper and expeditious conduct of the inquiry, you are not required to inquire or to continue to inquire into a particular matter to the extent you are satisfied that the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or proceeding.

40

Our point is, in Victoria it wasn't sufficiently or appropriately dealt with in Victoria because the reasoning process which underpins the Victorian recommendation is, with respect, flawed. Thus we submit in those circumstances, to the extent that you consider questions of shareholding is before you, and it clearly is, you should deal

45 with our arguments. And If you are of the view, that because of the changed circumstance to which I have adverted, which was not adequately dealt with in Victoria, the response in Victoria was an inappropriate response. And you should observe upon that, in our respectful submission.

COMMISSIONER JENKINS: Thank you for that, Mr Hutley. Your reference to giving evidence from the Bar table, I appreciate that. But it did remind me that I actually asked Mr Packer about this issue and his response was that he did not have
5 an objection to that recommendation. So if I could just highlight --- although his lawyers had some difficulty with it I think.

MR HUTLEY: Commissioner Jenkins, that was in the context where Mr Packer made perfectly clear he did not wish to enter into a debate about Commissioner
10 Finkelstein's recommendations.

COMMISSIONER JENKINS: All I am drawing that to your attention for, and I'm now pleased you are aware of that, is to point out that that is the evidence.

15 MR HUTLEY: I accept that.

COMMISSIONER JENKINS: I don't ask you impermissibly to give evidence from the Bar table, but that is the evidence along with the recommendation.

20 MR HUTLEY: But if the recommendation was predicated on an incorrect premise, whether my client is prepared to go along with it or not --- which in one sense, if it is a legislative outcome, they have no choice about, so it doesn't really matter --- is, in our respectful submission, not to the point. The point is whether you recommend that it shouldn't occur, and that depends upon whether an appropriate response to the
25 events which you find is to recommend such a compulsion.

In our respectful submission as we made, the basis for the recommendation from Commissioner Finkelstein was flawed and in our respectful submission, fundamentally flawed, , such that the recommendation is a recommendation --- if one
30 looks at the correct position, the recommendation could only be justified as some form of punishment which is wholly inappropriate, with respect.

COMMISSIONER JENKINS: Thank you, Mr Hutley. I don't have any other questions.

35

COMMISSIONER MURPHY: No, I certainly don't, Commissioner.

COMMISSIONER OWEN: Mr Hutley, could I just raise with you one question that you have not addressed this morning, and that is not a critical comment. But In the
40 written submissions you deal with the issue that was raised in evidence with Mr Packer and in the Perth Casino Royal Commission's written closing observations about Mr Packer's absence for a long period as chair of the board of Burswood Limited.

45 MR HUTLEY: Yes.

COMMISSIONER OWEN: You make the point that there is no evidence that that absence was causative of any particular problem. Can I take a slightly different approach to it and ask you for your comment on this: that as a matter of the modern

understanding of governance principles, leadership is important, leadership is vital in a commercial operation. I want you to assume there have been some identified governance deficiencies in the operation of Burswood Limited across the period that these investigations have taken, and that the absence of leadership from the person who is still the designated leader is simply not appropriate governance practice. And in that respect, could be even in the absence of direct evidence linking it in a causative sense to a particular problem, could be an explanation for some of the issues. So if you look at it in that way, it is an issue of principle and it may also be an issue of practical reality but you could certainly deal with it as an issue of principle.

MR HUTLEY: I accept, and we would accept, that good corporate governance mandates the presence of the chair whilst he or she, a person, whoever she or he may be, holds that role, on as regular a basis as one would consider practical or appropriate. We wouldn't dispute that. Therefore, that was a departure from good practice and we frankly conceded that in our submissions.

I would accept at a possibility level, because of the observations with respect that you make, Mr Commissioner, that Mr Packer's absence could --- could have had, as a matter of possibility, an a prophylactic --- absence, could have removed a potential prophylactic influence against one or more of the deficiencies which you may find. That, of course, has to be logically possible.

That would happen with respect to any director and I would accept that the position of chair may be said to have a higher probability of that occurring than perhaps a single, non-executive director. Can I answer that at that theoretical level. That is merely --- it's not merely, but it is the consequence of our concession that it was a matter of regret that Mr Packer did not stand down as chair if he was not attending, because there should have been a chair.

But there was at all times an acting chair in Mr Alexander, so one has to treat that as, with respect, a mitigating factor during that period. But I accept at a theoretic level that, we submit, is no more than to accept the matter of regret, which we have expressed in our submissions.

COMMISSIONER OWEN: Thank you, Mr Hutley. Mr Hutley, Thank you very much for your submissions. They have helped us and we are grateful for your input.

We will now adjourn until 1.30 pm.

ADJOURNED **[10:59a.m.]**

RESUMED **[1.30 PM]**

10:55AM

COMMISSIONER OWEN: Thank you. Please be seated. Yes, Ms Shepard. Thank
50 you

SUBMISSIONS BY MS SHEPARD

5 MS SHEPARD: Thank you, Commissioners. I appear with my learned junior, Dr David Townsend. And I thank the Commission for accommodating our appearance at this time.

You have Mr Felstead's written submission. I will also be making reference to Mr
10 Felstead's Summary of Argument if you have that to hand.

Might I commence my saying that Mr Felstead made significant concessions adverse to his interests in the Begin Inquiry. Nothing now said is intended to resile from those concessions or the findings of the Bergin Inquiry, understood in their proper
15 evidentiary context.

Mr Felstead disputes seven findings proposed by Counsel Assisting and some may properly be described as intermediate findings. Each disputed matter is pressed.

20 The matters canvassed by the disputed propositions are, in our respectful submission, serious. At a general level, they canvass the sorts of matters which might inform prosecutions under the Corporations Act for breaches of directors' duties or prosecutions under the Gaming and Wagering Commission Act, in particular section 29, which makes it an offence punishable by imprisonment or fine to knowingly or
25 recklessly make a statement which is misleading to the GWC.

It is our respectful submission that this Commission, consistent with the standard applied in similar Commissions of inquiry, ought to apply the civil standard informed by the Briginshaw principles; that is, this Commission ought to be satisfied that each
30 finding is based on compelling evidence and not inexact proofs, indefinite testimony or indirect references.

In this respect, we invite the Commission to pay careful regard to the evidence said to support each proposed finding. We have detailed in our submissions where we
35 say the evidence is wanting.

Precise findings of Mr Felstead's knowledge were made in the Bergin Report. Singularly or combined, these do not support the findings now proposed. For example, that Mr Felstead knew all matters relevant to the China arrests. If this
40 Commission is to go beyond the findings made in the Bergin Inquiry, it should do so, in our respectful submission, based on compelling evidence and not on assertion or generalisation.

Our submissions detail other concerns with respect to the disputed proposed findings
45 and I do not intend to go through each one.

However, two findings warrant special attention. Might I bring your attention,

Commissioners, to point 2 of the summary of argument. The focus of my address is two findings, the first of which is that the effect of Mr Felstead's evidence is that he was aware of facts that indicated that CRL had disregarded the welfare of its China-
5 based staff by exposing them to the risk of detention in China. This may be what is called an intermediate finding. It is no less significant for that because it is a stepping stone to ultimate findings, including the one immediately below it, as referred to at point 2 of the summary of argument.

10 Now, the effect of Mr Felstead's evidence in this and other inquiries is that he has never admitted he was aware that Crown had disregarded the welfare of its China-based staff or he was aware of matters which indicated to him that fact. No finding to that effect was made in the Bergin Inquiry, based on his or other evidence.

15 The effect of Mr Felstead's evidence is that at the relevant times, he had always thought Crown had put in place measures to safeguard staff, including obtaining legal and strategic advice. That is set out in our written submissions at paragraphs 10 and 27.

20 The fact that, in hindsight, these safeguards proved to be inadequate and Mr Felstead's trust in them was misplaced does not mean that Mr Felstead's belief was not genuine at the time. Further, it does not mean that Mr Felstead's expectation that the China staff would not be arrested and convicted lacked any reasonable basis. This must be so, where Crown's advice was that the China staff were not engaging in
25 illegal conduct and that was found to be the case in the Bergin Inquiry.

To make good those propositions, can I take the Commission to two pieces of evidence in the Bergin Inquiry and which have been tendered in this forum, but have not previously been brought to your attention.

30

The first piece of evidence I wish to go to is Mr Felstead's witness statement, dated 17 December 2019, CRL.540.001.0114. Can you turn to page ending 0129 of that document, which is internal numbering page 15. I direct your attention, Commissioners, starting at paragraph 49.

35

It is headed "My assessment of risk in China during the relevant period". Mr Felstead deposes that at all times during the relevant period, which is defined to be 6 February 2015 to 14 October 2016, he understood, on the basis of the advice obtained from WilmerHale, that Crown's operations in mainland China were legal according to the
40 laws of the People's Republic of China.

Turning over the page, further he did not think there was a risk that Crown's China staff would be prosecuted or convicted for gambling-related crimes or that Crown's operations in China would be stopped. Paragraph 15 makes reference to the
45 activities of other casinos.

At paragraph 51, halfway down the page, Mr Felstead says that he travelled regularly to China and then, in particular, “I travelled to mainland China on three occasions in 2016,

being in May, August and early October. On the last of those trips,I was accompanied by my wife. I would not have travelled into China to meet with customers or taken my wife into China if I considered there was a risk I would be
5 arrested."

The next piece of evidence I wish to take you to, Commissioners, is Mr Felstead's transcript of examination in the Bergin Inquiry, which is document BGN.0002.0001.1251. And can I ask the operator to go to page ending 1372 or
10 transcript 1374. Now at about line 22of that page, you will see Mr Felstead is asked the question, "Now, did travel to the mainland resume for executives in the VIP division in 2015?", to which Mr Felstead says, "Yes it did."

He indicates at about line 28 that for him personally, he went back to China in early
15 May and that's of 2015. Mr Felstead further volunteers that he made two more trips in 2015. Further down the page at about lines 39 to 40, he is asked about discussions about around the resumption of travel between him and other members of the VIP division.

20 Turning over to page ending 1373 or 1375 of the transcript, at line 6, Mr Felstead is then asked about the factors that he personally took into account in deciding it was appropriate to resume travel. At lines 7 to 11 of that page, Mr Felstead says he took into consideration the fact they were receiving advices from Mintz, our agency, that it was right to travel and advices from WilmerHale as well, and general information
25 about what other properties were doing in China.

Turning your gaze further down that same page at about line 39, sorry line 32, Mr Felstead then was asked about his trips in 2015 and 2016 and being accompanied by his wife. At line 39 Mr Felstead says, "Yes, that was the very last trip. That was in
30 around October 6, October 7 of 2016."

Now, I interpolate there to say the China arrests were coordinated raids conducted on 13 and 14 October 2016. So Mr Felstead was, in fact, visiting China in the weeks before that occurred.
35

He is then asked whether he had any concerns about his personal safety and risk of detention and he answers that he did not. Turning over the page, he is then asked, naturally, whether he had any concerns for his wife's safety. He said that he did not.

40 He is asked about the risk assessment he took in conducting himself and his wife to travel to China. He answers at line 10 that he was relying upon the consistent advice he received from WilmerHale and Mintz. He was thoroughly satisfied that was sufficient. He felt in no danger or threat in going there or taking his wife there.

45 Now, this evidence must be contrasted to the proposed finding. The proposed finding that the effect of Mr Felstead's evidence is he was aware of facts that indicated that Crown had disregarded the welfare of its China-based staff by exposing them to the risk of detention is difficult to reconcile with the evidence to

01:37PM

which I have just taken you. Nothing tendered or said in this Commission by Mr
50 Felstead lends support to the proposed finding by Counsel Assisting.

If I might turn back to point 2 of the summary of argument and the second proposed finding the subject of these oral submissions. That concerns the August 2017 presentation, which says that it is open to infer that or open to find that Crown
5 carelessly made the statement to the effect that the arrest of its China-based staff was unexpected. There is a reference then to what Mr Felstead would have known and that either his knowledge was not effectively conveyed or inadequate inquiries had been made. And its particular reference to the last sentence which is:

10 *In any of these cases, it is open to the PCRC to find that either Preston and/or Felstead were careless.*

I turn now to point 8 of the summary of argument. Counsel Assisting does not indicate how Mr Felstead may have been careless, and no careless act or omission
15 arises from the evidence.

This is made good at paragraphs 29 to 46 of our written submissions. In particular, Mr Felstead did not author, approve, present or participate in the August 2017 presentation. He had no involvement in the preparation of the PowerPoint, nor did
20 he attend the meeting where it was presented.

Now, no criticism is made of Counsel Assisting, who had a number of topics to cover with Mr Felstead in his full day of questioning, but the simple fact is that this topic was not one of them. Mr Felstead's statement said nothing more than he was aware a
25 presentation had been given to the GWC. There is no evidence he knew of the contents of the presentation or even what was said there. There was no evidence that any of the Crown employees or legal teams involved in the presentation sought his contribution.

30 So what the Commission is left with is nothing more than assertion and indirect inference to support the proposed finding. It is a serious finding. It asserts that Mr Felstead acted carelessly in performing his duties as an officer in the context of alleged misrepresentations to the GWC, which, as I indicated, is a potential offence. This sort of finding ought not be made on the basis of the evidence presented.
35
There is a further vice to the finding. It suggests that if someone had spoken to Mr Felstead, he, with his knowledge of events, should have said that he or Crown anticipated or expected the China arrests. No finding in the Bergin Report went that far. The Bergin Report says is that the significant risk of arrest ought to have been
40 appreciated by Crown and its officers; it was not. That was the vice.

However, a failure properly to appreciate the risk of an event does not thereby make the event one that was, in fact, expected. As it was, there is no evidence that Mr Felstead was asked his view either way on whether it was expected or whether that
45 view ought to be conveyed to the GWC.

Unless there is anything further, those are our submissions along with our written

outline.

COMMISSIONER OWEN: Thank you, Ms Shepard. Ms Shepard, we don't have
5 any questions we want to raise with you. We will consider, once again, all of the
written materials and we thank you very much for your presentation today. Thank
you.

MS SHEPARD: Thank you, Commissioners.

10

COMMISSIONER OWEN: I will now invite Counsel Assisting to make some
remarks.

MS CAHILL: Thank you, Commissioner.

15

SUBMISSIONS BY MS CAHILL

20 MS CAHILL: As foreshadowed by Commissioner Owen yesterday morning, these
remarks are confined to responding to the oral submissions made over the last two
days by interested parties. It is not intended to address each and every submission
that has been made, rather the intention is to focus on particular issues.

25 First, where submissions have been made about the approach it is said the PCRC
should or must take as to a particular issue, or where submissions have been made as
to a finding that the PCRC should or should not make on an issue. And to then
elaborate upon the range of matters that will be relevant for the PCRC to take into
account before it reaches a final conclusion about its approach to certain issues and
30 findings that it should make.

Where the Commissioners have already, through their questioning of counsel during
the course of yesterday and today, already elaborated these matters themselves in
respect of certain issues, I do not propose to repeat anything that has already been
35 said.

I begin by addressing some general matters of approach. It has been submitted by
more than one interested party over the last couple of days, in substance, that the
PCRC must proceed with caution in making any adverse findings against individuals.
40 That caution is expressed as a reminder to observe the Briginshaw principle and to
make only such adverse findings against individuals as are necessary.

So much may be accepted. But that caution, of course, applies equally to all adverse
findings against all parties, entities, as well as individuals, including the interested
45 parties.

With respect to the position of individuals particularly, much of the PCRC's inquiry
is concerned with identifying not the failings of individuals on any specific occasion
but, rather, systemic deficiencies in an organisation's practices and processes which

may compromise, respectively, the effectiveness of the GWC or the suitability of the relevant Crown entities.

5 In that context, it may, on occasion, be necessary to identify and make findings about the conduct of an individual in order to identify what is not a systemic deficiency, or to explain how a systemic deficiency in fact occurred. There may also be occasion where it is necessary to make a finding about an individual who remains integral to how a system operates and thereby contributes to an ongoing systemic deficiency.

10

The CPH parties have submitted that the PCRC should be cautious in its treatment of the findings of earlier inquiries. The Terms of Reference require the PCRC to have regard to the Bergin Report and the matters referred to in it, including findings. The Terms of Reference also expressly state that the PCRC is not required to inquire or to
15 continue to inquire into a particular matter, to the extent that it is satisfied the matter has been or will be sufficiently and appropriately dealt with by another inquiry or investigation or a proceeding.

The PCRC's obligation in the former case and its discretion in the latter would appear
20 to be directed to avoiding the situation where public monies are used to duplicate another inquiry when it is unnecessary to do so. Whether duplication is necessary or unnecessary needs to be considered by the PCRC on a case-by-case or finding-by-finding basis. It is likely to be very relevant to that consideration if a finding is conceded by a party against whom it is made or proposed to be made.

25

Where there is no concession, further inquiry may be necessary in order to ensure procedural fairness. What that further inquiry might entail will depend again on the circumstances. So for example, the absence of an interested party from a previous inquiry may militate against reliance on relevant findings in themselves, although the
30 underlying evidence gathered in that previous inquiry may, in appropriate circumstances and on notice to the interested party, be used to enable the PCRC to make its own findings.

I turn now to make some observations about Part B of the Terms of Reference that
35 enquire into aspects of the regulation of Perth Casino by the GWC and the Department's support of the GWC in that regard.

Counsel for the GWC made two related submissions focusing on apparent constraints under which the GWC has operated and, at least to some extent, may continue to do
40 so. The first was to characterise the GWC as, essentially, a volunteer body. That presumably must be understood as challenging the adequacy of the remuneration paid to GWC members, having regard to the relative importance and complexity of the statutory function members undertake.

45 If the PCRC were to conclude that the remuneration of members is and has been generally inadequate, that might suggest, as a matter of practical reality, that it may be difficult to attract members of suitable ability with appropriate experience to agree to serve on the board.

However, once a person has accepted a role as a member of any statutory board, including the GWC, it is a more contentious proposition to contend that the breadth of governance responsibility that is assumed or the diligence that is to be applied to that role is influenced by the level of remuneration a member receives.

The second constraint counsel for GWC identified was said to be a financial one arising from subsection 7(2) of the GWC Act. GWC submitted that this provision effectively requires that the GWC is, as counsel phrased it, "to live within its means". Counsel then went on to identify those means in respect of casino gaming regulation as being, principally, revenues derived from the casino tax.

The PCRC will need to consider the effect of the relevant statutory provisions on this point, in particular whether subsection 7(2) does restrict the resources available to the GWC or whether that provision may, properly construed, in fact provide for the opposite. Namely, to oblige the GWC to ensure that it derives revenue sufficient to enable it to properly and adequately discharge its functions and responsibilities.

Separately, it should be noted, that pursuant to section 9 of the GWC Act and section 14 of the *Casino Control Act*, the funds available to the GWC include appropriations from Parliament and it may be relevant to consider whether any appropriations have been sought or granted.

Counsel for the Department drew attention to the statutory framework and submitted that it established the role of the Department to support and assist the GWC in the exercise of the GWC's statutory functions, noting that the Department itself is not charged with any statutory decision-making role, as the GWC is.

There are two observations to make about that submission. The first is that the PCRC will again need to carefully consider the statutory framework, in particular subsection 18(1) and section 19 of the GWC Act. The former provision suggests that, by arrangement, Departmental officers may effectively be seconded to the GWC on a full-time or part-time basis. The latter provision suggests that a government department such as this one must assist the GWC, if and as directed by their responsible minister.

The second point is to examine the detail of precisely how the Department has assisted the GWC in practice, to consider whether the respective roles of the GWC and the Department have been as neatly separated as the Department appears to contend. The issues that emerge for consideration in that regard include the extent to which the Department has acted or purported to act on behalf of the GWC to exercise the GWC's powers and discharge its statutory responsibilities, whether by delegated authority or otherwise; the extent to which the GWC has overseen any exercise of its powers or discharge of its responsibilities by the Department on its behalf; the extent to which the Department has made itself accountable to the GWC in that regard; and the clarity and unity of understanding on the part of each of the GWC and the Department about those matters.

One particular example on this topic addressed by counsel for the Department yesterday concerned the most recent appointment of the Chief Casino Officer, purportedly by the Department, on the basis that section 9 of the Casino Control Act does not specify by whom the appointment should be made. One question that emerges there for the PCRC to consider is how the Department exercised power to make that appointment and whether, for example, that required delegated authority from either the responsible minister or the GWC and, if so, whether that was obtained.

Another example of the interaction of roles between the GWC and the Department arose in submissions of both the Department and the GWC in relation to policy development. The Department submitted that it has a responsibility to instigate policy development. The GWC submitted, however, that it is it that has that duty expressly and under subsection 7(1) of the GWC Act, albeit that, for practical purposes, the resources to enable the GWC to formulate policy reside within the Department.

So the matters for the PCRC to examine include whether the demarcation of roles and responsibilities as between the GWC and the Department in relation to matters such as policy formulation and development are sufficiently clearly and correctly understood on each side.

Counsel for the Department made submissions about a number of reforms said to have been instigated by the Department as a result of this inquiry with respect to the systems and processes of both the GWC and the Department. There are a couple of observations to be made, too, about those submissions.

Presumably they are intended to be relevant to the assessment of the current effectiveness and capability of the GWC and the quality of the support provided by the Department to the GWC. That is Terms of Reference at paragraphs 9 and 10.

However, the PCRC will need to consider the weight that can be attached to such submissions, that weight being affected by whether and the extent to which they are supported by evidence the PCRC has received.

A further issue that arises is the level of generality at which submissions may have been expressed as to a reform program but do not permit the PCRC to meaningfully examine or interrogate their substance.

I will return to Part B briefly in a moment in the context of some specific remarks about harm minimisation, but I now move to make some observations relevant to Part A of the Terms of Reference.

The exercise under paragraphs 1 to 5 of the Terms of Reference to inquire into and report upon whether the entities specified in those paragraphs are each a suitable person in respect of the activities designated there does not call for the granting or

withholding of sympathy by the PCRC, as suggested by counsel for GWC yesterday, nor the granting or withholding of punishment, as referenced by senior counsel for the Crown entities yesterday. The exercise is, rather, an objective one, albeit that it
5 involves weighing a number of factors to reach a conclusion on those topics.

Crown has submitted that the requirement for the PCRC to assess present suitability invites attention to the past as well as the future to assess the present position. To elaborate a little further on that, under the Terms of Reference the inquiry into and
10 assessment of suitability is suitability as at the date of the delivery of the final report, which is presently anticipated to be 4 March 2022.

As Commissioner Owen noted yesterday, there are some practical limitations that affect that inquiry, the most obvious being that the formal evidence gathering phase
15 of the inquiry has necessarily concluded at an earlier date than 4 March, to allow for procedural fairness to be afforded to interested parties and the final report prepared.

Separately in relation to an assessment of present suitability, it is important for the PCRC to enquire into historical conduct because, to the extent that past conduct
20 points against suitability, the identification of that conduct and any remediation of it is relevant to an assessment of present suitability.

Similarly, an inquiry into and an understanding of the future intended conduct of relevant entities, such as their intentions for future remediation or even merely their
25 intention to maintain existing improvements or currently effective practices, also speaks to present suitability.

Senior counsel for Crown engaged yesterday with Commissioner Jenkins and also Commissioner Owen about whether there are obligations, responsibilities or
30 expectations imposed upon the casino licensee separate from its legal responsibilities or other express regulatory requirements that derive from the special nature of a casino licence and are relevant to an assessment of suitability.

The effect of the Casino Control Act is that a person must be suitable to be granted a
35 casino licence. The PCRC will need to consider whether that suitability requirement, coupled with the particular features of a casino licence --- that is, the right to carry on a heavily restricted activity and the activity the subject of the licence being casino operations, being associated with particular risks such as the risks of gambling-related harm, exploitation by criminals and the facilitation of money laundering ---
40 suggest that a suitable person is one who meets an expected standard of conduct independently or irrespective of direct express regulation to reasonably mitigate those risks.

That need not be an abstract notion, incapable of sufficiently precise conception or
45 description, as senior counsel for Crown submitted yesterday, any more than it might be said that it is impossible to articulate and understand what is meant by a person to be fit and proper to be a legal practitioner or a medical practitioner. And the consequences in the case of a casino licensee would sound in an assessment of

suitability or otherwise to be or remain a licensee.

In regard to future remediation, counsel for GWC submitted that the PCRC ought to consider whether Crown's remediation program gives the PCRC a high level of confidence that change is imminent and to be sustained over the longer term. Senior counsel for Crown, on the other hand, urged that the benchmark is somewhat less than that, being what is reasonably foreseeable as to the prospects of remediation.

Whether one or other of those tests applies, or some other test, such as the probabilities or likelihood of remediation continuing and being maintained in the medium-term, there are some particular matters relevant to this issue for the PCRC to reflect upon. The first is to carefully consider which aspects of Crown's remediation program have properly been the subject of evidence and which have not. Broad assertions that, for example, the financial crime risk program "could be the most sophisticated" in the casino industry, or that its Responsible Gaming program is world-leading, in the absence of any evidence to support those assertions, may need to be put to one side.

Where there is an absence of evidence or only limited evidence as to the content or intended implementation of one or more aspects of Crown's remediation program, it may be relevant to consider the reason why. In particular, whether and to what extent Crown has been afforded the opportunity to bring forward evidence and has not done so to assist the PCRC inquiry either completely or at all and if it hasn't, why it hasn't. The PCRC may need to carefully consider the weight to be given to evidence where an absence of evidence or limited evidence is apparent in respect of the remediation path forward.

A related issue on this topic is that particular matters which may be in a state of flux and which might, therefore, create a degree of uncertainty about the path forward for Crown and, in particular, Perth Casino, may bear on an assessment of suitability. Such matters could include the absence of a present or pending appointment of a CEO of the Perth Casino, the absence of an interim COO appointment, the likelihood and consequences of the implementation of the recommendations of the Victorian Royal Commission as to the requirement for separate board and senior management for Melbourne Casino and, similarly, the likelihood and consequences of the Blackstone Group's acquisition of the CRL shareholding.

Specifically in relation to those last two matters, whether they create uncertainty in respect of the leadership team upon which the remediation of Perth casino's remediation of its systems (inaudible) and culture depends is something that would need to be considered.

Crown submitted to the PCRC yesterday in terms that while the corporate structure operation of the Perth Casino could be simplified, it does not bear relevantly on the assessment of suitability. Yesterday, too, Commissioner Owen engaged with senior counsel for Crown about two potential breaches of the obligations imposed by the Burswood Property Trust, insofar as Burswood Resort (Management) Limited seemingly does not manage the trust operations, that is the casino operations, and

Burswood Limited as unit holder seemingly involves itself in the operation of the casino licence.

5 Senior counsel, if I understood it correctly, submitted in terms that such breach was not of relevance to the question of suitability because even if such acts were in conflict with the provisions of the trust deed, they were consented to by the trustee.

The PCRC will need to consider that submission and Commissioner Owen has
10 invited Crown to make further submissions on that topic. Together with the terms of the State Agreement and what that calls for in terms of compliance with the trust deed is one matter that will need to be considered. Separately, the PCRC will need to consider how the corporate structure adopted in fact by the Burswood entities sits with the regulatory framework, such as subsection 19(4) of the Casino Control Act,
15 which in terms does not permit any person other than the licensee to conduct games at the Perth Casino, and section 24 which empowers the GWC to give directions only to the licensee in respect of gaming operations.

Another matter that the PCRC may wish to take into account when considering those
20 submissions includes whether the complexity of the corporate structure makes it difficult for those individuals who have oversight of the companies within the structure to develop a coherent and unified view about which entity is responsible and accountable for the governance and management of Perth Casino, whether Burswood Limited's business includes, relevantly, the operation of the Perth Casino
25 and, if so, whether it can be said as a matter of substance rather than form that its head office is located in Western Australia, as effectively required under the State Agreement through mandatory articles of the company's constitution.

The CPH parties and Crown have both submitted in terms that the suitability of CPH
30 parties should not be considered by the PCRC. The first reason given is that none of the CPH parties are expressly made the subject of inquiry in the Terms of Reference. However, the PCRC may wish to consider whether relevant conduct of other entities or individuals bears upon an assessment of the suitability of the entities that are nominated in the Terms of Reference. Shareholders who have been or are in a
35 position to influence the conduct of those entities are potential members of that category, as are individuals, such as past and current directors of the companies referred to in the Terms of Reference and their senior management.

The second reason given by the CPH parties is that the question of the influence of
40 any CPH parties upon any of the Crown entities is, to use the expression of senior counsel, extinct and not merely dormant by reason of undertakings that have been given. Whether it is possible or, indeed, necessary for the PCRC in order to assess the suitability of the nominated Crown entities to reach a level of satisfaction that there is no prospect whatsoever at any time in the future of influence by a CPH party
45 upon the Crown entities is open to question. The task for the PCRC may lie more modestly in being able to conclude what is probable, both in terms of the exercise of influence or not, in fact, and over what time frame. Further, an assessment of the relevant past conduct of the CPH parties may expose systemic deficiencies in the

governance or management, or both, of the Crown entities which are important to identify and consider the extent to which they have been addressed.

A related topic concerns the submissions made by senior counsel for the CPH parties this morning about the recommendation made by the Victorian Royal Commission for a cap on CPH's shareholding in CRL. Whether a recommendation of that character falls within the PCRC's Terms of Reference will need to be considered. Were the PCRC to conclude that it does, the residual question would be whether such a recommendation should be made. A consideration of that latter matter would have regard not only to an examination of the factual basis on which such a recommendation would be premised as senior counsel submitted this morning, but also other matters, including whether the existing legislative framework already provides a mechanism for addressing the mischief or deficiency which such a recommendation would seek to address or whether there are other alternative recommendations which might be more appropriate for the regulatory context here in Western Australia.

Senior counsel for the CPH parties also engaged this morning with Commissioner Jenkins on the topic of the GWC's submission that the PCRC should recommend in substance legislative amendments to allow for this inquiry and its report to be treated or deemed an inquiry for the purposes of section 21A(5) of the Casino Control Act. Without rehearsing that discussion, some further matters for the PCRC to take into account when considering the GWC's submissions are these: first, aside from the question which will need to be considered of whether the Terms of Reference permit such a recommendation to be made, consideration may also need to be given as to whether this inquiry could be regarded as a suitable proxy for an inquiry under section 21A(5). There is some commonality between the language of paragraphs 1 to 5 of the Terms of Reference and certain provisions of the Casino Control Act to do with determinations by the minister about whether an applicant for a licence is a suitable person or whether a close associate of the licensee remains a suitable person. Although it should be noted that the Terms of Reference expressly define what is meant by a suitable person, the Casino Control Act does not. Further, those statutory provisions to which I've just referred, and which reflect the language of the Terms of Reference, are not directly referable to the circumstances in which the minister may direct an inquiry under section 21A.

Finally, the administrative decision of a minister to direct an inquiry under that provision involves a consideration of the public interest. Not in a general sense, but as that term is expressly defined in section 3 of the Casino Control Act.

Finally, I will make some summary remarks about harm minimisation. Both GWC and Crown made submissions to the PCRC yesterday to the effect that each of them had observed their responsibilities in relation to harm minimisation. In the case of GWC, it was said that GWC had always placed considerable emphasis upon harm minimisation. Reminding ourselves that one of the primary focuses of this inquiry is upon the effectiveness or otherwise of systems and processes, that submission will fall to be assessed by reference not only to the approach or attitudes of the individual

members but by reference to an examination of the regulatory structure imposed by the GWC to mitigate the risk of gambling related harm, such as the existence or non-existence of directions to the licensee, inspection and audit procedures, policies, research and the like.

In the case of Crown it was said that it had not in the past failed to recognise its responsibilities and a number of points were reiterated to support that general submission. One was that Crown should not be judged as to expectations that were not made clear to it at the time. Another was that harm minimisation is largely unregulated in Western Australia. On those points the PCRC will need to consider whether the special nature of the licence has always imposed, and accordingly Crown should have always appreciated, an expectation upon it that the licensee would do what is reasonable to mitigate the risk of gambling related harm at Perth Casino. As to the general submission that Crown has not in the past failed to recognise its responsibilities, it will be relevant, among other things, for the PCRC to consider the extent of changes to Crown's RSG system in recent times and what that may say about the adequacy of the system in the past.

Going forward, Perth Casino's remediation program for harm minimisation in particular will need to be considered in the way in which I've described earlier in respect of its remediation program more generally. The quality and completeness of the evidence provided to the PCRC about that program will be of relevance in that regard.

May it please the Commission.

COMMISSIONER OWEN: Thank you, Ms Cahill. We're also grateful to you for your assistance in submissions.

In accordance with our commitment to procedural fairness I would like to invite counsel for interested parties who have been given leave to make oral submissions to make any submissions in reply, strictly in reply, to what Counsel Assisting has said. Is there anyone who would like to avail themselves of that opportunity? No. All right.

Then, that brings us to the conclusion of the public hearings. On behalf of the Commissioners, can I express our gratitude to the interested parties, to their counsel and solicitors, to counsel and solicitors assisting the Commission, the secretariat of the Commission, our IT and transcript providers and other contractors and to the Western Australian Industrial Relations Commission for their assistance in providing the physical facilities. I'm not going to name individuals, they will be recognised in the final report. But, having said that, I think it would be remiss of us as the Commissioners not to place on public record our sincere gratitude to Ms Danielle Davies as our project director whose expertise, energy, enthusiasm and diligence has got us to the place that we are. And I can now say with some relish that the hearings of this inquiry are now adjourned indefinitely.

HEARING ADJOURNED AT 2.16 PM.

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